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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

XOCHITL HERNANDEZ,
CESAR MATIAS, for themselves
and on behalf of a class of
similarly-situated individuals,

Plaintiffs-Petitioners,

v.

WILLIAM P. BARR,
U.S. Attorney General, et al.,
Defendants-Respondents.

CIVIL ACTION NO. 5:16-00620-JGB-KK

**EX PARTE APPLICATION FOR A
STATUS CONFERENCE OR, IN THE
ALTERNATIVE, TO MODIFY
EXPERT DISCOVERY DEADLINES
AND OTHER TRIAL SCHEDULING
DEADLINES**

Judge: Hon. Jesus G. Bernal
Magistrate Judge: Hon. Kenly Kiya Kato
Special Master: Hon. Rosalyn M.
Chapman

Fact Discovery Cutoff: July 15, 2019
Pretrial Conference: Sept. 9, 2019
Trial: Sept. 24, 2019

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD

Please take notice that, pursuant to Local Rule 7-19, Defendants submit this ex parte application to request that the Court set a status conference or, in the alternative, modify the expert discovery deadlines and the remaining trial schedule. As a result of recent amendments to the case schedule, the Parties' fact discovery cut-offs are after the expert discovery deadlines and the deadline to file motions for summary judgment. Plaintiffs therefore request that the Court set a status conference to discuss proposed modifications to the case schedule or, in the alternative, order proposed amendments to the case schedule to ensure that the parties can complete expert discovery and dispositive briefing after the production of all discovery.

Plaintiffs submit this ex parte application for clarification because the "relief requested cannot be calendared in the usual manner." *See Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Under the case schedule currently in effect, dispositive motions must be heard by July 29, 2019, which under the Local Rules requires that they must be filed by July 1, 2019. If Plaintiffs proceeded by a noticed motion, the motion would be calendared at the earliest on June 24, 2019—a week before dispositive motions must be filed. Plaintiffs will therefore be forced to expend considerable resources preparing a dispositive motion, based on an incomplete factual record, absent ex parte relief. Plaintiffs also did not create the current situation necessitating expedited relief. *See id.* at 492-93. As set forth in the attached memorandum, Defendants have not completed production of court ordered discovery, including a substantial number of documents and database information, to date. For this reason, the Court on May 10, 2019, extended Plaintiffs' fact discovery cut-off until July 15, 2019. Plaintiffs' retained experts therefore lacked a substantial amount information for their expert analyses and reports, and Plaintiffs cannot complete preparations for dispositive briefing, due to Defendants' delayed discovery productions.

Pursuant to Local Rule 7-19.1, on May 24, 2019, Plaintiffs provided Defendants' counsel with telephonic notice of their intent to file this ex parte application. Defendants

counsel indicated that they will take a position after reviewing Plaintiffs' application and will inform the Court. Defendants' counsel's contact information is:

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This ex parte application is based on this Notice of Ex Parte Application and the following memorandum of points and authorities.

DATED: May 28, 2019

Respectfully submitted,

/s/ Michael Kaufman

Michael Kaufman

Counsel for Plaintiffs Hernandez and Matias, and
a certified class of similarly situated individuals

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Xochitl Hernandez, Cesar Matias, and the certified class they represent (collectively, “Plaintiffs”), through their counsel, request that the Court set a status conference on June 10, 2019 when the Parties will be before the Court on another motion, or, in the alternative, modify the expert discovery deadlines and the remaining trial schedule. Recent amendments to the case schedule set the fact discovery cut off *after* the expert discovery deadlines and the deadline for filing dispositive briefing. Extensions of the case schedule are therefore necessary to ensure that the parties can complete expert discovery and dispositive briefing after the production of all discovery.

Plaintiffs are cognizant that this Court denied the Parties’ Joint Stipulation to Modify the Civil Trial Scheduling Order on April 30, 2019. (ECF No. 314.) In their Stipulation, the Parties proposed that the Parties “meet and confer in good faith and propose amended non-fact discovery case scheduling deadlines” after the final resolution of then-pending motions that affected Defendants’ fact discovery cut off. (ECF No. 300 at 4.) This Court subsequently issued orders that settled the fact discovery cut offs for Plaintiffs and Defendants. (*See* ECF No. 301, 313, 320.) Most recently, on May 10, 2019, this Court issued an order denying Defendants’ Rule 53(f) objections to the Special Master’s order compelling production of information related to the preliminary injunction, and altered the case schedule as follows:

the fact discovery cut-off for both parties shall be extended from March 29, 2019 to “60 days after the depositions of the named plaintiffs are completed or July 31, 2019, whichever is earlier.” The Court extends Plaintiffs’ discovery cut-off solely to ensure Defendants have adequate time to comply with the Special Master’s Order and does not thereby authorize Plaintiffs to either propound any new discovery requests or file new discovery-related motions.

(ECF No. 320 at 6.) Because the depositions of the Named Plaintiffs were completed on May 15, 2019, the Parties’ fact discovery cut-off is July 15, 2019.

In light of the amendments to the case schedule, Plaintiffs submit that there is “good cause” to modify the current scheduling order under Federal Rule of Civil Procedure 16(b)(4). Plaintiffs do not seek further modification of the fact discovery cut

1 off. However, Plaintiffs submit that extensions of non-fact discovery deadlines,
2 including for expert discovery and trial, are necessary to ensure there is adequate time to
3 prepare dispositive briefing and for trial, as well as for the Parties to explore the
4 possibility of settlement before a neutral party.

5 This Court had previously approved a case schedule that set a period for expert
6 discovery following the discovery cut off. (*See* ECF Nos. 235, 243, 265.) The Parties
7 had proposed this case sequencing to ensure that the Parties' experts had access to all
8 discovery produced in the case to include in their analysis. (*See* ECF No. 234 at 2
9 ("[T]he Parties desire to conduct expert discovery and serve expert reports after the
10 close of fact discovery, instead of before the discovery cutoff as under the current
11 schedule, so that expert reports are based on a closed factual record and to avoid the
12 need for supplementation after discovery closes").) Pursuant to that case schedule
13 sequencing, Plaintiffs' counsel retained experts who are in the process of preparing
14 reports based on discovery produced in the case.

15 However, as a result of recent amendments to the case schedule, the fact
16 discovery cut off now falls *after* the close of expert discovery. (*Compare* ECF No. 320
17 at 6 (setting fact discovery cut off for July 15, 2019) *with* ECF No. 265 (setting expert
18 disclosure deadline for April 19, 2019 and expert discovery cut off for May 24, 2019).)
19 In addition, Defendants have repeatedly delayed producing compelled discovery in this
20 case, including until immediately prior to or after the expert disclosure deadlines. For
21 example, the Court ordered Defendants to produce documents responsive to Plaintiffs'
22 First Requests for Production on December 1, 2017. (ECF No. 129.) A year and a half
23 later and notwithstanding the then-close of fact discovery of March 29, 2019,
24 Defendants continued to produce documents pursuant to that order, including a
25 production of over 100,000 pages of documents on April 11, 2019 (amounting to more
26 than 20% of all documents produced in the case). (*See* ECF No. 298 at 1.) After
27 Defendants withheld database records responsive to the Court's December 1, 2017,
28 discovery order, Plaintiffs filed a Motion to Enforce the order, which resulted in

Defendants' agreement to produce additional responsive database records by May 15, 2019. (*See* ECF Nos. 269; 309 at 1.)¹ Most recently, this Court affirmed the Special Master's order compelling Defendants to produce information about the preliminary injunction, and Defendants are scheduled to produce responsive database information and documents by May 31, 2019. (*See* ECF No. 324 at 2.)

Because Defendants have continued to produce discovery well beyond the current expert discovery deadlines, Plaintiffs' experts lacked a substantial amount of relevant information for their expert analyses and reports by the expert disclosure deadlines. Plaintiffs therefore submit there is good cause to extend the deadlines for expert discovery until after the close of fact discovery. *See Cal. Ins. Guarantee Ass'n v. Burwell*, No. 2:15-cv-01113-ODW, 2016 WL 3360955, at *3 (C.D. Cal. June 14, 2016) (holding that the "good cause" standard primarily considers the parties' diligence in meeting the existing scheduling deadlines). This Court had already ordered a case schedule that ensured that the Parties' experts could have access to all discovery to include in their analysis. (*See* ECF Nos. 235, 243, 265.) An extension of expert discovery deadlines will simply preserve the Court's previously-approved case sequencing, in light of the recent amendments to the fact discovery cut off.

Plaintiffs believe that the deadlines to conduct a settlement conference and hear dispositive motions should similarly be extended, and that the pretrial conference and trial dates should be continued for a commensurate amount of time. On the current schedule, dispositive motions must be heard by July 29, 2019, which under the Local Rules requires that they must be filed by July 1, 2019. (*See* ECF No. 265 at 2.) The filing deadline therefore falls *before* the current fact discovery cut off of July 15, 2019. To ensure that there is sufficient time to complete dispositive motion briefing after the

¹ Defendants' April 11 and May 15, 2019 productions also fell after Plaintiffs' fact discovery cut off then in effect, March 29, 2019. Even though Defendants believed that the Scheduling Order did not permit productions beyond the discovery cut off, they did not seek leave of the Court for their untimely productions or other relief to excuse what they believed to be violations of the Scheduling Order. (ECF No. 303 at 12-13.)

1 close of fact (and expert discovery, if the deadlines are extended), Plaintiffs request that
2 that the Court extend the deadlines for dispositive motions, the settlement conference,
3 and pretrial conference and trial dates.

4 Plaintiffs also submit that additional time for dispositive motions is necessary
5 given the volume of discovery and complexity of the issues presented in this case. To
6 date, the discovery produced has included hundreds of thousands of pages of
7 documents, a large volume of database information, written responses to interrogatories
8 and requests for admission, and twelve depositions. Plaintiffs believe that additional
9 time is necessary to ensure that they can adequately review, prepare and present this
10 evidence to the Court at summary judgment.

11 The Parties also intend to engage in settlement negotiations prior to the filing of
12 dispositive motions. On May 22, 2019, this Court granted the Parties' request for
13 referral to Magistrate Judge Laurel Beeler for a Settlement Conference. (ECF No. 331.)
14 In accordance with this Court's Order, the Parties are waiting to be contacted by Judge
15 Beeler's chambers to schedule a date and time for the Settlement Conference. *Id.*
16 Plaintiffs believe that the deadlines to conduct a settlement conference and hear
17 dispositive motions should be extended to ensure the Parties can dedicate sufficient time
18 and energy to determining whether a settlement can be reached. If these deadlines are
19 extended, Plaintiffs also believe that the pretrial conference and trial dates should be
20 continued for a commensurate amount of time.

21 For the foregoing reasons, Plaintiffs respectfully submit that modifications to the
22 case schedule are warranted. Accordingly, Plaintiffs request that the Court set a case
23 management conference for June 10, 2019 to discuss and agree upon modifications to
24 the case schedule. The Parties are already scheduled to appear before the Court on June
25 10, 2019 for a separate motion (*see* ECF No. 323).

26 In the alternative, in the absence of a case scheduling conference, Plaintiffs
27 request that the Court modify the existing deadlines in the Civil Trial Scheduling Order,
28 as follows:

1	Plaintiffs' Fact Discovery Cutoff:	July 15, 2019
2	Defendants' Fact Discovery Cutoff:	July 15, 2019
3	Initial Expert Disclosure:	July 29, 2019 ²
4	Rebuttal Expert Disclosure:	August 19, 2019
5	Expert Discovery Cutoff:	September 3, 2019
6	Last Date to Conduct Settlement Conference:	November 29, 2019
7	Last Date to Hear Dispositive Motions:	December 2, 2019
8	Pretrial Conference:	January 13, 2019 at 11 a.m.
9	Trial:	January 28, 2020 at 9 a.m.

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11
12 DATED: May 28, 2019

Respectfully submitted,

13
14 /s/ Michael Kaufman

15 Michael Kaufman

16 Counsel for Plaintiffs Hernandez and Matias, and
17 a certified class of similarly situated individuals
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27 ² Plaintiffs propose July 29, 2019 as the expert disclosure deadline, which is the earliest
28 possible date that the experts can complete their reports in light of their pre-existing
vacation plans and other commitments.